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In re the Matter of:) Case No.: 07-283
)
State of New Hampshire Banking) Order to Show Cause
)
Department,) with Immediate Suspension
)
Petitioner,)
)
and)
)
Elliot A. Willard d/b/a Family)
)
Mortgage Company, Elliot A. Willard)
)
and Gilbert W. Cox,

Respondents

This Order commences an adjudicative proceeding under the provisions of RSA 397-A:17, RSA 541-A and BAN 200.

Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire Banking Department (hereinafter "the Department") may issue an Order to Show Cause why a license should not be revoked. RSA 397-A:17 states that the Department may issue such Order when a licensee violates any provision of the Chapter, fails to meet the standards espoused in the Chapter, or for other reasons. RSA 397-A:21 states the Commissioner may impose penalties of up to \$2,500 per violation of the chapter.

Pursuant to RSA 397-A:17 and RSA 541-A:30 the Commissioner may by order summarily postpone or suspend any license or application pending final determination of any order to show cause, or other order, or of any other proceeding under this section, provided the commissioner finds that the public interest would be irreparably harmed by delay in issuing such order

1 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind
2 such orders as are reasonably necessary to comply with the provisions of the
3 Chapter.

4 Pursuant to RSA 397-A:21, the Commissioner has the authority to
5 suspend, revoke or deny any license and to impose administrative penalties of
6 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

7 **NOTICE OF RIGHT TO REQUEST A HEARING**

8 The above named respondents have the right to request a hearing on this
9 Order to Show Cause, as well as the right to be represented by counsel. In
10 accordance with RSA 541-A a hearing shall be held not more than ten days from
the signing of this Order.

11 After said hearing and within 20 days of the date of the hearing the
12 commissioner shall issue a further order vacating the Order to Show Cause or
13 making it permanent as the facts require and making such findings as are
14 necessary on the Show Cause order. All hearings shall comply with 541-A. If
15 the person to whom an order is issued fails to appear at the hearing after
16 being duly notified, such person shall be deemed in default, and the proceeding
17 may be determined against him or her upon consideration of the Order to Show
Cause, the allegations of which may be deemed to be true.

18
19 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

20 The Staff Petition dated October 30, 2007 (a copy of which is attached
21 hereto) is incorporated by reference hereto.

22 **ORDER**

23 WHEREAS, finding it necessary and appropriate and in the public
24 interest, and consistent with the intent and purposes of the New Hampshire
banking laws, and

25 WHEREAS, finding that the allegations contained in the Staff Petition,
if proved true and correct, form the legal basis of the relief requested,

1 It is hereby ORDERED, that the Respondent shall show cause why:

2 1. Administrative penalties of \$7,500.00 should not be imposed

3 against Respondent Family; and

4 2. Administrative penalties of \$7,500.00 should not be imposed

5 against Respondent Willard; and

6 3. Administrative penalties of \$10,000.00 should not be imposed

7 against Respondent Cox; and

8 4. Respondents license should not be revoked; and

9 FINDING a substantial likelihood that delay will cause harm to the public
10 health, safety or welfare, requiring emergency action it is hereby further

ORDERED:

11 5. Respondent's license is immediately suspended; and

12 6. A hearing on the immediate suspension will be scheduled to
13 occur in the next ten days pursuant to RSA 541-A:30, III.

14 SIGNED,

15
16 Dated: 10/30/07

17 /SRAF/
PETER C. HILDRETH
BANK COMMISSIONER

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) Case No.: 07-283
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) Staff Petition
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- 1 6. On or about October 29, 2007 the Department began conducting an
2 examination of the licensee at the Concord branch office.
- 3 7. The Examiner in Charge (hereinafter "EIC") became aware that the
4 expenses of the branch office were being paid from a certain account
5 which upon information and belief bears the name 1House.com LLC.
- 6 8. The EIC requested that Respondent Cox provide the Department with
7 the records for the account. Respondent Cox refused to provide any
8 records for this account despite numerous requests.
- 9 9. The Department is in possession of information which indicates that
10 mortgage applications are being taken at the branch location under
11 the name 1House.com LLC.
- 12 10. Respondent Cox admitted that he pays expenses of the branch from the
13 1House.com LLC account.
- 14 11. On October 29, 2007 the Department attempted to examine the branch
15 records of the Atkinson branch. The examiners were refused access
16 to any branch records on that date. The branch manager further
17 refused to meet with the examiners to answer questions related to
18 branch activities despite his presence at the branch office.
- 19 12. On October 29, 2007 Respondent Family, through Counsel, assured
20 Petitioner that refusal to provide bank account information at the
21 Concord branch was a miscommunication issue and that examiners would
22 be granted access to all branch related information for either
23 branch that day or the following day.
- 24 13. On or about October 30, 2007 Respondents Cox notified the EIC that
25 the account records would not be provided.

ISSUES OF LAW

1 II. The staff of the Department, alleges the following issues of law:

2 1. The Department realleges the above stated facts in paragraphs 1
3 through 13.

4 2. The Department has jurisdiction over the licensing and
5 regulation of persons engaged in mortgage broker activities
6 pursuant to NH RSA 397-A:3.

7 3. Pursuant to RSA 397-A:12 I the Department may examine the
8 business affairs of any licensee as it deems necessary to
9 determine compliance with the chapter and the rules adopted
10 thereunder. In determining compliance the Department may
11 examine the books, accounts, records, files, and any other
12 documents or matters of any licensee or person. The Respondents
13 violated this provision by failing to provide records of an
14 account after they were requested by the EIC.

15 4. Pursuant to RSA 397-A:12 II the Department may examine the
16 records of any licensee and of any person by whom any such loan
17 is made, whether such person shall be licensed to act, or claim
18 to act, as principal, agent or other representative. The
19 Department shall have access to the books, papers, records files
20 and vaults of all such persons. Respondent Cox violated this
21 provision by failing to provide records of an account after they
22 were requested by the EIC.

23 5. Pursuant to RSA 397-A:12 III all books, papers, files, related
24 material, and records of assets of the licensee shall be subject
25 to the banking department's examination. The Respondents

1 violated this provision by failing to provide records of an
2 account after they were requested by the EIC.

3 6. Pursuant to RSA 397-A:12 VII every person being examined, and
4 all of the officers, directors, employees, agents, and
5 representatives of such person shall make freely available to
6 the commissioner of his examiners, the accounts, records,
7 documents, files, information, assets and matters in their
8 possession or control relating to the subject of the examination
9 and shall facilitate the examination. The Respondents violated
10 this provision by failing to provide records of an account after
11 they were requested by the EIC.

12 7. Pursuant to RSA 397-A:17 the Commissioner may issue an order
13 requiring a person to whom any license has been granted or any
14 person under the commissioner's jurisdiction to show cause why
15 the license should not be revoked, suspended, or penalties
16 imposed, or both, for violations of this chapter.

17 8. Pursuant to RSA 397-A:20 the Commissioner may issue such orders
18 as are reasonably necessary to carry out the provisions of the
19 Chapter.

20 9. RSA 397-A:21 IV provides that any person who, either knowingly
21 or negligently, violates any provision of Chapter 397-A, may
22 upon hearing, and in addition to any other penalty provided for
23 by law, be subject to suspension, revocation or denial of any
24 registration or license, including the forfeiture of any
25 application fee, or the imposition of an administrative fine not
 to exceed \$2,500, or both. Each of the acts specified shall

1 constitute a separate violation, and such administrative action
2 or fine may be imposed in addition to any criminal penalties or
3 civil liabilities imposed by New Hampshire Banking laws.

4 10.RSA 397-A:21 V provides that every person who directly or
5 indirectly controls a person liable under this section, every
6 partner, principal executive officer or director of such person,
7 every person occupying a similar status or performing a similar
8 function, every employee of such person who materially aids in
9 the act constituting the violation, and every licensee or person
10 acting as a common law agent who materially aids in the acts
11 constituting the violation, either knowingly or negligently, may,
12 upon notice and opportunity for hearing, and in addition to any
13 other penalty provided for by law, be subject to suspension,
14 revocation, or denial of any registration or license, including
15 the forfeiture of any application fee, or the imposition of an
16 administrative fine not to exceed \$2,500, or both. Each of the
17 acts specified shall constitute a separate violation, and such
18 administrative action or fine may be imposed in addition to any
19 criminal or civil penalties imposed.

20 **RELIEF REQUESTED**

21 III. The staff of the Department requests the Commissioner take the
22 following Action:

- 23 1. Find as fact the allegations contained in section I of this
24 petition;
25 2. Make conclusions of law relative to the allegations contained
in section II of this petition;

3. Assess fines and administrative penalties in accordance with RSA 397-A:21, for violations of Chapter 397-A, in the number and amount equal to the violations set forth in section II of this petition against each of the named Respondents; and
4. FIND that licensee's refusal to submit business records for inspection constitutes a danger to public health, safety or welfare requiring emergency action; and
5. Order an immediate suspension of their New Hampshire mortgage broker license; and
6. Order Respondents to show cause why their license should not be revoked; and
7. In accordance with RSA 397-A:20, Order the Respondent to immediately cease taking mortgage applications; and
8. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

RIGHT TO AMEND

IV. The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A or the regulations thereunder.

Respectfully submitted by:

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 /S/
James Shepard
Staff Attorney

10/30/07
Date